Mrs. Shakila Khader and Others

Vs

Nausheer Cama and Others

Criminal Appeal Nos. 50-51 of 1971

(A. Alagririswami, N. L. Untwalia JJ)

10.03.1975

JUDGMENT

ALAGIRISWAMI, J. –

1. These two appeals are by special leave granted by this Court against the judgment of a learned Judge of the Andhra Pradesh High Court. By that judgment the learned Judge set aside the conviction of the first respondent of offences under Sections 304-A, 337, 338 and 427 I.P.C. passed by the Third City Magistrate, Hyderabad and confirmed on appeal by the Principal Sessions Judge, Hyderabad. The facts giving rise to these appeals are as follows.

2. In the evening of June 4, 1967 seven young men, including the first respondent whom we shall hereinafter refer to as the accused, went in a Herald car, driven by the accused, from Hyderabad to Secunderabad and were passing along the Tank Bund Road connecting the two cities. There was an accident in which the car and scooter were involved as a result of which the rider of the scooter died and one of the occupants of the car died a few days later. PWs 3 and 4 were the eyewitnesses to the accident and PWs 5, 6 and 7, who were among the occupants of the car, were treated as hostile and cross-examined by the prosecution. PW 1 was also one of the eyewitnesses. Both the trial Court as well as the appellate Court on an exhaustive consideration of the evidence came to the conclusion that it had been established that the accused was driving his car in a rash and negligent manner and was responsible for the accident. On revision, however, the learned Judge of the High Court took the view that both the courts below have failed to judge the story of the prosecution with a view to find out whether the said incident could have taken place in the manner alleged by the prosecution and that there is no critical appraisal by them. He though that if the car was really going at a high speed and also hit against an electric pole that cannot be on the pole merely a stain of blue colour which tallies with the colour of the scooter and that there must have been much more damage to the pole. He also though that the further fact that the car travelled another 45 feet and hit against the parapet wall and then turned turtle showed that the car must have been travelling at an extremely high speed but there is a little blue paint on the pole and a faint stain of gray colour on the parapet wall. He though that if the prosecution had brought on record the extent and particulars of the damage to the car, the Court would have been in a better position to assess the truth of the prosecution story. He has further observed that PWs 3 and 4 were silent as to how the scooter got entangled into the car and then was dragged. He also held that the place of the accident indicated in the plan had not been proved by the prosecution by any evidence to be the same. He therefore came to the conclusion that the prosecution had not made an attempt to place a clear picture of the occurrence before the Court so as enable it to assess whether the petitioner was driving the car in a rash or negligent manner when the accident took place. He though that PWs 3 and 4 did not have the capacity to fix the speed of the car and it cannot be said that the speed of the car when it met

with the accident was so high that it amounted to an act of culpable rashness on the part of the accused. Finally he came to the conclusion that the accident must have taken place in the twinkling of an eye and it is difficult to believe that the witnesses were in a position to see how actually the occurrence took place and it is just possible that they have reconstructed the story drawing on their imagination. As a consequence he allowed the revision and set aside the conviction. The Criminal Appeal No. 50 is by the widow of the deceased scooter rider and Criminal Appeal No. 51 is by the State.

3. It appears to us that the learned Judge has not only exceeded the scope of his powers while exercising the Court's revisional jurisdiction but has completely misdirected himself in regard to the appreciation of the evidence. We have evidence in this case that the width of the road at the point where the accident took place was 30 feet 10 inches and the accident took place at a point 9 feet 3 inches from the edge of the road on the wrong side. As the car driven by the accused was going from Hyderabad to Secunderabad the accused was on the wrong side of the road when the accident took place. After the accident the car hit an electric pole and the parapet wall on the wrong side of the road. The learned Judge is not right in saying that the place of accident indicated in the plan has not been proved by the prosecution by any evidence to be the same. The plan, Ex. P-19 drawn by the Investigating Officer, PW 21 as well as the evidence of PW 9, who speaks to the measurements taken by the police and the preparation of the Panchnama, Ex. P-8 which bears his signature, and gives evidence that its contents are correct prove the exact point of impact between the car and the scooter. As against the evidence of PWs 3 and 4 that the accused overtook a motor cycle, a bus an Ambassador car and was going on the wrong side of the road and that was how the accident occurred, the explanation attempted by the accused in his statement given under Section 342 Cr. P.C. was that he was going behind the bus and the scooter came and hit him. If that was so the accident could not have taken place on the wrong side of the road. Nor could the scooter, even if it had overtaken some other vehicles, got behind the bus and hit at the car. According to the accused he swerved to the left in order to avoid the scooter and when he swerved to the left to avoid the scooter his car was going off the road and in order to bring it back on the road he swerved the car towards the right due to which it hit the parapet wall and overturned. This story is wholly unacceptable. If he had swerved his car to the left it should have hit the parapet wall to the left and not the parapet wall on the right.

4. We can see no satisfactory reason for not accepting the evidence of PWs 3 and 4 which the two courts below had accepted after a careful consideration. There was occasion for the witnesses to notice the car because just a little earlier a girl was in danger of being run over by the car and she had to run back to avoid being hit by the car. As far as the evidence of PWs 5 to 7 is concerned the less said the better. They had obviously gone back on their statement given to the police and that is why they were allowed to be treated as hostile in cross-examination. It would have been better if their statements had been proved by the police officer who recorded them. But it has not been done in this case. Even so their evidence is interesting. PW 5 says that at the time of the incident their car was behind the bus and then when he was directing his attention towards the boat-club the dash took place between the car and the scooter. The same criticism which we have made of the statement of the accused applies to this evidence also. PW 6 stated that he did not know how the accident took place. PW 7's evidence is to the the same effect as PW 5's. As regards the evidence of PW 1 it was wrong to have allowed him to be cross-examined by the prosecution with reference to the statement which he had given to the police. Under Section 162 Cr. P.C. only witnesses on behalf of the prosecution could be contradicted by reference to their statements made to the police, and not court witnesses of defence witnesses. Even so in the circumstances of this case his evidence, which is more or less similar to the evidence of PWs 5 to 7 cannot be accepted.

5. In an attempt to impugn the evidence of PWs 3 and 4, Mr. Frank Anthony appearing on behalf of the accused referred to Ex. P-7 the inquest report, and wanted to argue that PW 3 was not an eyewitness to the accident as his name does not find a place in it. Quite clearly there is no substance in this contention. In an inquest all the witnesses need not be examined as an inquest under Section 174 Cr. P.C. is concerned with establishing the cause of the death and only evidence necessary to establish it need be brought out. A look at Ex. P-11 would also show that this contention is baseless. In the inquest held over the body of Surender Reddy, one of the occupants of the car, only PW 3 has been examined and not PW 4. We see therefore no substance in the contention that Ex. P-7 establishes that PW 3 was not one of the eyewitnesses.

6. The facts in the case speak eloquently about what should have happened. The main criterion for deciding whether the driving which led to the accident was rash and negligent is not only the speed but the width of the road, the density of the traffic, and the attempt, as in this case, to overtake the other vehicles resulting in going to the wrong side of the road and being responsible for the accident. Even if the accident took place in the twinkling of an eye it is not difficult for the eyewitness to notice a car overtaking other vehicles and going to the wrong side of the road and hitting a vehicle travelling on that side of the road. The criterion adopted by the learned Judge for assessing the evidence of PWs 3 and 4 and rejecting them is thoroughly unjustifiable. There may be cases where it is difficult to be clear or specific in giving details as to the cause of the accident but this is not one such case. The reference by the learned Judge about the slight damage to the electric post and the conclusion drawn therefrom that the car could not have been going at a high speed is not correct as we shall show later. His further observation that the fact that the car travelled another 45 feet and hit against the parapet wall and turned turtle showed that the car must have been travelling at an extremely high speed but there is a little blue paint on the pole and a faint gray stain on the parapet wall is self-contradictory unless we are to infer that the learned Judge implied that the one or the other is not true. He does not so hold. There can be no doubt about the car having hit the electric post and the parapet wall. That and the fact of its overturning would establish the rash and negligent driving. A car driven normally and travelling behind a bus does not go to the opposite side of the road and hit an electric post and parapet wall and turn turtle. The car apparently stopped only because it turned turtle. It did not hit the electric post or the parapet wall full tilt; if it did it would have stopped at one of those points. We should remember that the collision with the scooter and pushing it back would have considerably reduced the speed of the car. Even so it travelled father. The slight damage to the electric post and the parapet wall is because the car hit them sideways. Nobody has suggested that they were brought into existence for the purpose of this case. The car would probably not have stopped but for turning turtle and it should have been travelling quite fast before it could overturn as the learned Judge himself realises. There is only one conclusion possible on the facts of this case and that is that the accused came over to the wrong side of the road and was responsible for the accident and that is clearly a rash and negligent act in the condition of the road and the condition of the traffic.

7. The appeals are allowed and the judgment of the learned Principal Sessions Judge is restored.

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